

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

RALPH ALVARADO §
v. § CIVIL ACTION NO. 5:10cv18
TELFORD UNIT §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Ralph Alvarado, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The sole named defendant in the lawsuit is the Telford Unit of TDCJ.

Alvarado complained that he has written to the Internal Affairs Department of TDCJ (now known as the Office of the Inspector General), but that they have “denied my complaints of rape, assault, and getting murder with electronic machinery by the intercon operator ‘CRANK.’” In an attached memorandum, Alvarado states that he wants to file criminal charges because he is “going through a lot of torture,” because his life is endangered by someone “killing me with machinery every day.” He states that when his complaints get to the warden, he gets sent to “mental units.”

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed. The Magistrate Judge observed that Alvarado has filed three previous lawsuits or appeals which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted, and so Alvarado is subject to the three-strikes bar of 28 U.S.C. §1915(g). The Magistrate Judge stated that Alvarado did not pay the full filing fee and has not shown that he is in imminent danger of serious physical injury. Thus, the Magistrate Judge recommended that Alvarado

be denied *in forma pauperis* status and that the lawsuit be dismissed with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same allegations, but without prejudice to the refiling of the case upon payment of the full filing fee. The Magistrate Judge also recommended that should Alvarado pay the full filing fee within 15 days after the dismissal of the case, he be allowed to proceed as though the full fee had been paid from the outset.

Alvarado filed objections to the Magistrate Judge's Report on September 9, 2010. In his objections, Alvarado contends that he filed an "interdistrict in your unit and is raping me and assaulting me and torturing me, you'll took out my statute body, to be put on an interdistrict, that's a murder case." He adds that "if you'll have me in an interdistrict 4 murdering me, by torture and operations and laser cutting and burning me. If I die you are responsible. Because I have put in complaints to warden, internal affairs, and sheriff and Crime Stoppers, what you are doing to me by murder with your interdistrict, getting murder in seg by interdistrict, don't forget my courthouse Dallas Tyler San Antonio."

As the Magistrate Judge correctly observed, a prisoner subject to the §1915(g) bar must allege specific facts showing that he is in imminent danger of serious physical injury, and general allegations not grounded in specific facts are not sufficient. In this case, Alvarado's vague and conclusory allegations are not sufficient to invoke the physical injury exception. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. While Alvarado did not file a motion for leave to proceed *in forma pauperis*, such status is DENIED *sua sponte*. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$350.00 filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as though the full fee had been paid from the outset. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 1st day of October, 2010.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE